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William T. Neary

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re	No.	01-30923 DM
PACIFIC GAS AND ELECTRIC COMPANY,	Chapter	11
Debtor.	Date:	October 29, 2002
	Time:	1:30 p.m.
	Ctrm:	235 Pine Street, 22 nd Floor San Francisco, California

**UNITED STATES TRUSTEE'S OBJECTION TO FEES OF HOWARD RICE, HELLER
EHRMAN AND DELOITTE & TOUCHE; REQUEST FOR HOLD-BACK; AND REPORT ON
CURRENT AND CUMULATIVE PROFESSIONAL FEES**

William T. Neary, United States Trustee, respectfully: 1) objects to the fees of Howard Rice, Heller Ehrman and Deloitte & Touche; 2) requests that there be a 20% hold-back with respect to certain PG&E's professionals; and 3) submits his report on professional fees, appended to the Declaration of Patricia Martin filed herewith, made pursuant to 28 U.S.C. § 586(a)(3), showing current and cumulative billings to date by firm and category of work.

I. OBJECTIONS

A. 14 HOUR DAYS - HELLER EHRMAN and HOWARD RICE

A number of professionals at Heller Ehrman and Howard Rice show large numbers of very long billing days. Even if these hours were spent, they should be subject to billing judgment for effectiveness and reduced. In order for a professional to bill 14 or 15 hours, he

or she must be at work considerably longer. This would strongly suggest significantly decreased effectiveness at some point. Accordingly, we submit a 10 - 20% reduction is reasonable and warranted for all time billed during 14+ hour days. This would be a total reduction of \$16,000 - \$32,000 for the Heller firm and \$26,750 - \$53,500 for the Howard Rice firm. A summary is set forth below:

SUMMARY OF TOTAL NUMBER OF 14+ HOUR DAYS BY FIRM AND INDIVIDUAL

Heller Firm

			# of 14 Hr	Total	Total
Person	Position	Hrly Rate	Days	Hours	Fees
Berman, Stan	Shareholder	\$365/\$468	6	93.5	40,977
Cole, Adam	Shareholder	\$297/\$342	2	29.8	9,454
Fiala, Maria	Shareholder	\$392/\$459	2	31.2	12,264
Kim, Hyun	Special Counsel	\$329	9	151.0	49,679
Sheen, Raymond	Associate	\$315	1	14.1	4,442
Grace, Sandy	Associate	\$261	7	117.2	30,590
Luster, David	Paralegal	\$158	3	49.0	7,742
Stone, Matthew	Paralegal	\$104/\$122	3	46.2	5,073
			33	532.0	160,220

Howard, Rice

Kaplan, Gary M. (*)	Director	340/360	17	269.3	94,746
Sherr, Steve	Director	350	4	62.3	21,805
Nexon, Janet	Director	385/405	3	49.4	19,681
Margolin, Amy	Director	330	2	32.2	10,626
Schaffer, Jeffrey	Director	435	2	28.7	12,485
Lopes, James	Director	560	1	14.7	8,232
Lafferty, William	Director	360/380	3	47.4	17,652
Kim, Jin	Associate	240	4	59.2	14,208
Bliss, Kimberly	Associate	250	3	44.9	11,225
Zapparaoni, Ceide	Associate	265	2	33.1	8,772
Schulz, M.	Associate	225	2	30	6,750
Katsen, Inna	Associate	251	1	15.4	3,865
Whitman, Jenna	Associate	195	1	14.7	2,867
Luttrell, Tracey	Associate	275	1	14.7	4,043
Kessler, Keith	Associate	275	1	14.3	3,933
Bartholomew, M.	Associate	225	1	14.3	3,218
Ferrer, Jerome	Legal Assistant	175	3	63.4	11,095
Gresham, Bryan	Legal Assistant	180	2	36.3	6,534
Hunt, Nathaniel	Legal Assistant	40	2	35.5	1,420
O'Connor, Padraig	Legal Assistant	135	2	31.6	4,266
			57	911.4	267,420

* Gary M. Kaplan days - 14.8, 16.3, 16, 15.8, 14.7, 16.3, 16.2, 16.6, 19.7, 15, 15.7, 14, 18.2, 16.1, 14.3, 14.2, 15.4 - a total of 269.3 hours or \$94,746.

See Martin Declaration, ¶ 4 and Exhibit 2 (Heller) and Exhibit 3 (Howard, Rice)

1 **B. DELOITTE'S HOURS RE LEARNING, BUDGET and SUPERVISING**

2 Deloitte's employment was expanded to audit "historical" financial statements being
3 prepared by the debtor for Etrans, Gtrans, Gen and the reorganized debtor which are
4 necessary for the regulatory application process. Although Deloitte's fees decreased
5 63.45% from the last billing period, there may be room for further reduction in areas of
6 supervision, budget & review, and "learning," i.e., "understanding the client's business," and
7 "understanding the methodology". These billings suggest they may be non-compensable
8 overhead, and unless they are more fully justified, they should be denied entirely. There are
9 over 300 time entries for these matters, and the total billings are:

	<u>Hrs</u>	<u>Fees</u>
Supervision and Review	490.0	\$164,741
Budget and Review	64.8	17,892
Understanding the Clients Business	24.8	7,754
Understanding the Methodology	15.8	5,542
Total	<u>595.4</u>	<u>\$195,929</u>

13 See Martin Declaration, ¶ 5 and Exhibits 4 -8.

14 **II. REQUEST FOR HOLD-BACK - POTENTIALLY DUPLICATIVE FEES**

15 Fees and expenses through July 31, 2002, are \$64+ million. According to PG&E's
16 disclosure statement, PG&E's Parent intends to ask for reimbursement for its reorganization
17 work estimated at \$110 million. The Parent's professionals include Dewey Ballantine, Weil
18 Gotschal, Laurence Tribe and financial advisors. They have all been actively involved in
19 the formulation of the plan, preparation of the disclosure statement, plan prosecution, key
20 hearings, litigation, and regulatory applications and proceedings. With multiple sets of
21 attorneys working on the same issues, it is difficult to determine the reasonableness of one
22 firm's fees and contribution without seeing the others'. Accordingly, we suggest a hold-
23 back of 20% for Howard Rice, Heller Ehrman, Cooley Godward, Rothschild, Skadden Arps,
24 and Winston Strawn fees to ultimately determine if they are reasonable and not duplicative
25 of the Parent's effort should the PG&E plan be confirmed. Given the amounts of fees
26 awarded to date, a hold-back of 20 % does not appear to be onerous. The numbers and
27 effect of a hold-back at 20% and 10% are:
28

	Current <u>Fees</u>	Cumulative <u>Fees</u>	20% Hold-back of <u>Current Fees</u>	<u>% Total</u>	10% Hold-back of <u>Current Fees</u>	<u>% Total</u>
Howard	\$5,273,610	\$17,273,043	\$1,054,722	6.11%	\$527,361	3.05%
Heller	2,939,671	9,578,932	587,934	6.14%	293,967	3.07%
Cooley	1,073,623	3,036,375	214,725	7.07%	107,362	3.54%
Rothschild	800,000	2,896,667	160,000	5.52%	80,000	2.76%
Skadden	329,231	2,365,935	65,846	2.78%	32,923	1.39%
Winston	<u>471,518</u>	<u>2,224,910</u>	<u>94,304</u>	4.24%	<u>47,152</u>	2.12%
	<u>\$10,887,653</u>	<u>\$37,375,862</u>	<u>\$2,177,531</u>		<u>\$1,088,765</u>	

We submit that a reasonable hold-back would be 20% of all current fees billed for a total reduction of \$2,177,531, assessed to each of the firms as set forth above.

III. REPORT ON PROFESSIONAL FEES

A comprehensive report on professional fees awarded and requested is appended to the declaration of Patricia Martin filed herewith and is provided pursuant to 28 U.S.C. § 586(a)(3), showing current and cumulative billings to date by firm and category of work.

IV. ARGUMENT

The United States Trustee is responsible for, among other things, supervising the administration of cases and "monitoring applications for compensation and reimbursement filed under section 330 of title 11." 28 U.S.C. § 586(a)(3)(A). Counsel has the burden of proving entitlement to compensation under 11 U.S.C. § 330(a)(3)(A). *In re Xebec*, 147 B.R. 518, 524 (Bankr. 9th Cir. 1992). The Bankruptcy Code permits the Bankruptcy Court to award "reasonable compensation for actual, necessary services" to professionals employed under sections 11 U.S.C. §§ 327 and 1103. To merit compensation, an applicant for fees must prove an "identifiable, tangible, and material benefit to the estate." *Andrews & Kurth LLP v. Family Snacks, Inc. (In re Pro-Snax Distributors, Inc.)*, 157 F.3d 414, 426 (5th Cir. 1998). An applicant must affirmatively show requested fees are compensable and actual and necessary. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc., (In re Puget Sound Plywood, Inc.)*, 924 F.2d 955, 958 (9th Cir. 1990). Each firm should review its total request and exercise billing judgment where large numbers of hours are spent which may not have been completely effective. See, *In re Maruko Inc.*, 160 B.R. 633 (Bankr. S.D. Cal. 1993); *In re Holder*, 207 B.R. 574 (Bankr. M.D. Tenn. 1997). In this case, Howard Rice

1 and Heller Ehrman have not adequately exercised billing judgment and reduced time billed
2 where there were numerous 14+ hour days by certain individuals.

3 **V. CONCLUSION**

4 Based on the foregoing, the court should reduce all fees billed by Heller Ehrman and
5 Howard Rice for all 14+ hour days by 10 - 20% (\$16,000 - \$32,000 and \$26,750 - \$53,500
6 respectively); fees billed by Deloitte for supervision, budget, and learning should be denied
7 unless further justified; and a hold-back of 20% should be imposed on Howard Rice
8 (\$1,054,722), Heller Ehrman (\$587,934), Cooley Godward (\$214,725), Rothschild
9 (\$160,000), Skadden Arps (\$65,846) , and Winston Strawn (\$94,340).

10 Dated:

Respectfully submitted,

11 Patricia A. Cutler
12 Assistant U.S. Trustee

13 By: 
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15 Attorneys for U.S. Trustee
16 William T. Neary
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1 **PROOF OF SERVICE**

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3 I, the undersigned, state that I am employed in the City and County of San Francisco, State
4 of California, in the office of the United States Trustee, at whose direction the service was made; that
5 I am over the age of eighteen years and not a party to the within action; that my business address is
6 250 Montgomery Street, Suite 1000, San Francisco, California 94104, that on the date set Out below,
7 I served a copy of the attached:

8 **UNITED STATES TRUSTEE'S OBJECTION TO FEES OF HOWARD RICE, HELLER EHRMAN
9 AND DELOITTE & TOUCHE; REQUEST FOR HOLD-BACK; AND REPORT ON CURRENT AND
10 CUMULATIVE PROFESSIONAL FEES**

11 **DECLARATION OF PATRICIA A. MARTIN IN SUPPORT OF UNITED STATES TRUSTEE'S
12 OBJECTION TO PROFESSIONAL FEE APPLICATIONS AND HIS REPORT ON CURRENT AND
13 CUMULATIVE PROFESSIONAL FEES**

14 by placing such a copy, enclosed in a sealed envelope, with prepaid postage thereon, in the United
15 States mail at San Francisco, California, addressed to each party listed below.

16 James L. Lopes
17 William J. Lafferty
18 Howard Rice Nemerovsky et al.
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San Francisco, CA 94111

29 I declare under penalty of perjury that the foregoing is true and correct. Executed at San
30 Francisco, California on October 9, 2002.

31 By 
Yung Nor Wong